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**GEL** **A** Matter of

**Kenny Marchant for Congress  
and Joe Moore, as treasurer  
David Jordan Schirman**

# DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a way to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues presented in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971 (the "Act"), and developments of the law. It is the Commission's policy to pursue relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has determined that MUR 6541 should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss MUR 6541.<sup>1</sup>

Complainant Grant Stinchfield, a Republican candidate for the May 2012 primary election in Texas' 24th Congressional District, alleges that two individuals made illegal contributions in the names of others in violation of the Act. Specifically, Mr. Stinchfield states

Complaint Filed: March 20, 2012. Response from Kenny Marchant for Congress Filed: May 3, 2012. Response from David Jordan Schirman Filed: May 18, 2012.

1 that his Committee held a golf tournament fundraiser on February 27, 2012, and two gentlemen  
2 allegedly registered for the tournament by making \$40 online contributions and, on the day of the  
3 tournament, filled out volunteer forms. Compl. at 1. The two names submitted with the  
4 contributions and volunteer forms were "Jordan Sherman" and "Carter Kendall." *Id.* However,  
5 thank-you notes sent after the tournament to these two individuals by Stinchfield for Congress  
6 ("Stinchfield Committee") were returned as having incorrect addresses. *Id.*; Compl. Ex. At 4.  
7 Using publicly available information and the Facebook social media site, the Stinchfield  
8 Committee determined that "Jordan Sherman" was actually David Jordan Schirman. Compl. at  
9 1. The Stinchfield Committee was unable to determine the true identity of "Carter Kendall." *Id.*

10 The Complaint states that the Stinchfield Committee contacted Schirman who "confirmed  
11 he made illegal contributions under false names and a false person." *Id.* The Complaint also  
12 states that the "credit card records confirmed his report of making a credit card contribution in  
13 another name other than his own." *Id.* Schirman also volunteered that his "best friend" . . . is  
14 employed by Mr. Marchant," who was also a candidate in the Texas 24th Congressional District.  
15 *Id.* Thus, the Stinchfield Committee alleges that Schirman and Marchant for Congress  
16 ("Marchant Committee") knowingly and willfully violated 2 U.S.C. § 441f "to gain access to  
17 what was a fundraiser for supporters of my campaign but in lieu tried to spy on my campaign and  
18 obtain information about my supporters." Compl. at 2.

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1 The Marchant Committee argues that the evidence is insufficient “to justify an  
2 investigation.”<sup>2</sup> Marchant Resp. The Marchant Committee also points to 11 C.F.R.  
3 § 110.4(c)(3) and argues that the contribution here could be viewed “through the lens of an  
4 anonymous contribution.” *Id.* In his emailed response, Schirman admits that he made a \$40  
5 payment for a round of golf, lunch, and a beverage but that “it was never [his] intent to provide a  
6 donation.” His Response makes no mention of using any fictitious names nor does it mention a  
7 relationship between himself and any employee of the Marchant Committee.<sup>3</sup>

8 Under the Act “no person shall make a contribution in the name of another person....”  
9 2 U.S.C. § 441f. The Act requires that contributions be made in one’s own name, rather than the  
10 name of another, in order to promote full disclosure of the actual source of political  
11 contributions. *United States v. O'Donnell*, 608 F.3d 546, 553-54 (9th Cir. 2010). A fictitious or  
12 “false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that  
13 the contribution is from another person who may be real or fictional.” *O'Donnell*, 608 F.3d at  
14 549 (emphasis original); *see also* 11 C.F.R. § 110.4(b)(1)(i), (b)(2)(ii).

15 Based on the facts presented, the responses, and publicly available information, it appears  
16 that David Jordan Schirman made one or possibly two \$40 payments under fictitious names.  
17 There is some information presented in the Complaint that Schirman knew that his payment for

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<sup>2</sup> In a footnote, the Marchant Response suggests that perhaps the Commission should investigate “whether Stinchfield for Congress knowingly and willfully violated the Act by accepting an illegal in-kind corporate contribution from the corporation that owns Brookhaven Country Club” because the fair market value of a round of golf, a cart, lunch, and beverages “certainly exceeds \$40, yet Stinchfield for Congress did not report either a payment to the country club or an in-kind contribution to cover the apparent loss for holding this fundraising event.” The Response provides no further information to support its allegation. Moreover, since the statement arises in a footnote and fails to meet the requirements for a proper complaint under 2 U.S.C. § 437g(a), this Office is not recommending that the Commission take any action.

<sup>3</sup> We note that the Schirman response was received from the same email listed on the online contribution receipt for “Carter Kendall” and listed on the handwritten volunteer form for “Jordan Sherman” on the day of the golf tournament fundraiser.

1 the round of golf could be related to, and benefit, the Stinchfield campaign. For example, the  
2 volunteer forms attached to the Complaint indicate that the contribution is related to the  
3 Stinchfield campaign.<sup>4</sup> Compl. Ex. at 1-3. Additionally, according to the complainant,  
4 "Mr. Schirman confirmed he made illegal *contributions* under false *names* and a false person."  
5 Compl. at 1 (emphasis added). The Stinchfield Committee, however, was unable to determine  
6 the identity of the second player, Carter Kendall.<sup>5</sup> Regardless of whether Schirman made one or  
7 possibly two \$40 payments for the golf tournament, his motives remain unclear. There is  
8 insufficient evidence to determine whether his payments were made with the intention to violate  
9 2 U.S.C. 441f. A review of the Commission database shows no federal contributions by anyone  
10 with the name of "David Jordan Schirman," "Carter Kendall," or "Jordan Sherman." Further,  
11 that Schirman may have a friend employed by Marchant does not, by itself, create a sufficient  
12 nexus between the payment(s) and the Marchant Committee to lead to an inference that the  
13 Marchant Committee was involved in the contributions.<sup>6</sup>

14 Therefore, due to the extremely small amount involved and the fact that no further  
15 contribution activity appears to be associated with the fictitious names or Schirman, the Office of  
16 General Counsel recommends that, in furtherance of the Commission's priorities as discussed

<sup>4</sup> Further, an internet search reveals what appears to be the piryx page linking interested individuals to the Stinchfield for Congress golf tournament, found here: <http://giving.piryx.com/streams/Stinchfield-for-Congress/Golf-With-Grant/T47ZjAwZ/Golf-With-Grant>. To register for the tournament, one must click on the button that reads "Donate Now to Stinchfield for Congress." Doing so leads one to the registration and payment page here: <https://secure.piryx.com/donate/T47ZjAwZ/Stinchfield-for-Congress/Golf-With-Grant>. This page contains the requisite disclaimer indicating that payments for the golf tournament are contributions. One must check a box indicating he affirms that the contribution information provided is true and accurate in order to register for the golf tournament and have his payment processed.

<sup>5</sup> The Complaint makes no mention of pictures taken of Kendall at the golf tournament or any other identifying information, and the Complaint does not attach the handwritten volunteer form for "Carter Kendall."

<sup>6</sup> The Marchant's Committee reliance on 11 C.F.R. § 110.4(c)(3) is inapt. That regulation provides that political committees may not accept anonymous cash contributions in excess of \$50. Here, the contributions were neither anonymous nor cash. Compl. Ex. at 1-2. Therefore, 11 C.F.R. § 110.4(c)(3) is inapplicable.

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1 above, relative to other matters pending on the Enforcement docket, the Commission should  
2 exercise its prosecutorial discretion and dismiss this matter pursuant to *Heckler v. Chaney*,  
3 470 U.S. 821 (1985). The Office of General Counsel also recommends reminding David Jordan  
4 Schirman concerning the prohibition on making contributions in the name of another person, as  
5 provided under 2 U.S.C. § 441f. Further, the Office of General Counsel recommends that the  
6 Commission approve the attached Factual & Legal Analyses and the appropriate letters and close  
7 the file.

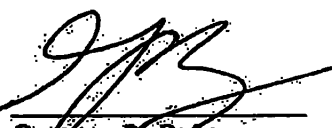
8  
9 **RECOMMENDATIONS**

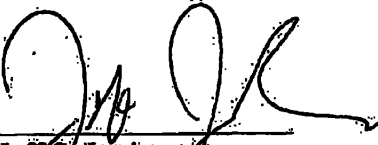
- 10 1. Dismiss MUR 6541, pursuant to the Commission's prosecutorial discretion.  
11 2. Remind David Jordan Schirman concerning the prohibition on making  
12 contributions in the name of another person, as provided under 2 U.S.C. § 441f.  
13  
14 3. Approve the attached Factual & Legal Analyses and the appropriate Letters; and  
15 4. Close the file as to all respondents.

16 Anthony Herman  
17 General Counsel  
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19  
20 3/19/13  
21 Date

22 BY:

  
23 Gregory R. Baker  
24 Deputy General Counsel  
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Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

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